

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

UNITED STATES, in its own right and on
behalf of the Lummi Nation,

Plaintiff,

LUMMI NATION,

Plaintiff-Intervenor,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY, et al.,

Defendants.

NO. C01-0047Z

[PROPOSED]
ORDER SETTING FORTH
PROCESS TO CONSIDER
JOINT MOTION TO
APPROVE SETTLEMENT
AND ENTER PROPOSED
JUDGMENT AND ORDER

The active parties to the litigation represented by counsel, which are the United States, the Lummi Nation, the State of Washington Department of Ecology, Whatcom County, Water Associations represented by J. Timothy Slater, and numerous individual defendants represented by Gene Knapp ("Settling Parties"), have entered into a Settlement to resolve the outstanding issues in the case. The Court finds that, in order to determine whether to approve the Settlement and enter the proposed Judgment and Order, it is necessary to establish a procedure to (1) notify all parties to the litigation that a Settlement has been proposed in the action and (2) provide parties an opportunity to file any objections they may have to approval

1 of the Settlement and/or entry of the proposed Judgment and Order. The following procedures
2 shall govern the proceedings to consider the Joint Motion to Approve Settlement and Enter
3 Proposed Judgment and Order ("Approval Motion").

4 To the extent the procedures set forth below are not consistent with the Local Rules for
5 the Western District of Washington, the Court expressly finds that the specific rules set forth
6 below supersede the Local Rules. The normal briefing schedule for responses to the
7 Approval Motion is vacated, and the schedule set forth below is substituted.

8
9 1. The United States shall, within 10 days after this Order Setting Forth Process to
10 Consider Joint Motion to Approve Settlement and Enter Proposed Judgment and Order
11 ("Process Order") has been entered by the Court:

12 (a) mail a copy of the following documents to all defendants in the action who
13 have not entered an appearance or been dismissed, at their last known mailing address:

14 (1) Proposed Settlement Agreement Regarding Uses of Groundwater on Lummi
15 Peninsula (Dkt. ____) ("Settlement"; (2) proposed Judgment and Order (Dkt. ____);
16 (3) Approval Motion (Dkt. ____); and (4) this Process Order, including the Notice of
17 Proposed Settlement attached hereto as Exhibit A; and
18

19 (b) first publish the Notice of Proposed Settlement in a newspaper of general
20 circulation in Whatcom County and publish it once thereafter in the following week.

21
22 2.A. Any defendant opposing approval of the Settlement and/or entry of the
23 proposed Judgment and Order shall file a written objection with the Court on or before
24 December 15, 2006 at the address listed in paragraph 8 below. Such defendant shall also mail
25 a copy of such objection to counsel of record for the Settling Parties at the addresses listed in
26 paragraph 9 below. Such objection must include:

1 (1) the name and mailing address of the objector;

2 (2) a description of the water right asserted in objector's claim, including the
3 location and tax parcel number of the land on which the water has been used,
4 the amount of water so used, and the date on which the water was first put to
5 use;

6 (3) an explanation as to why the proposed Settlement and/or proposed Judgment
7 and Order would impair the alleged water rights of the objector or other legally
8 protected interest; and
9

10 (4) a list of any witnesses and exhibits that the objector intends to present at any
11 hearing on the objection.

12 B. The objector shall also mail to counsel for the Settling Parties a copy of each exhibit
13 the objector intends to present in support of their objection, and a detailed summary of the
14 testimony the objector expects the witnesses to give at hearing, including the objector's own
15 testimony if the objector intends to be a witness. **The objector shall not file copies of these**
16 **documents with the Court at this time.**
17

18 C. Objectors shall have the opportunity, during regular business hours, to review and
19 copy all documents produced in discovery in this litigation, at the offices of Raas, Johnsen, &
20 Stuen, P.S., Attorneys at Law, 1503 E Street, Bellingham, Washington, 98225. Any additional
21 discovery of a responding party shall be permitted only with leave of the Court.
22

23 3.A.. Any party to the Settlement Agreement may file a response to each objection
24 within 45 days after the objection has been filed with the Court. The responding party may
25 make discovery of the objector regarding the objection. The response must include:

26 (1) any motion for summary disposition of the objection; and

1 (2) a list of any witnesses and exhibits that the responding party to the
2 Settlement Agreement intends to present at any hearing on the objection.

3 B. The responding party shall also mail to the objector or the objector's counsel a
4 copy of each exhibit the responding party intends to present in support of the response, and a
5 detailed summary of the testimony the responding party expects the witnesses to give in
6 support of the response, including the responding party's own testimony if the responding
7 party intends to be a witness.
8

9 4.A. If any motions for summary disposition are filed by a party to the Settlement
10 Agreement in connection with any objections, a response to such motion for summary
11 disposition, including any declarations or exhibits, shall be filed by the applicable objector(s)
12 within 30 days after the motion for summary disposition has been filed with the Court.
13

14 B. Replies shall be filed by those moving for summary disposition within 20 days
15 after the responses have been filed. Unless otherwise directed by the Court, no hearings will
16 be conducted regarding motions for summary disposition. The Court, after considering the
17 motion, response, and reply, shall issue decisions on each motion for summary disposition.
18

19 5. As to objections to which no motion for summary disposition has been filed, or to
20 which a motion for summary disposition was filed and the Court concludes that a hearing is
21 necessary, the Court shall conduct expedited hearings on such objections. These hearings, and
22 the hearing on the Approval Motion, will take place on or about April 2, 2007. The Court at a
23 later date will inform the applicable parties of the exact date and time of each objection
24 hearing. The objector and parties responding to such objection shall have the opportunity at
25 such hearings to present witnesses and introduce evidence.
26

1 6. Upon completion of all hearings, if any, on objections, and the hearing on the
2 Approval Motion, the Court shall enter a decision either (a) approving the Settlement and
3 entering the proposed Judgment and Order or (b) disapproving the Settlement and declining to
4 enter the proposed Judgment and Order.

5 7. The Court shall approve the Settlement and enter the proposed Judgment and
6 Order if, after considering any admissible evidence presented, it determines that the parties to
7 the Settlement have established by a preponderance of the evidence that:
8

9 (a) The Settlement is fair, adequate, and reasonable, considering all of the
10 circumstances surrounding the settlement; and

11 (b) The water rights or other legally protected interest claimed by the
12 objector(s) were:

13 (i) not established by the objector; or
14

15 ii) if established, the objector's water rights or other legally protected
16 interest would not be materially injured by the terms of the Settlement and
17 proposed Judgment and Order; or the objector is bound by the Settlement terms
18 by virtue of the objector's relationship to a party that has agreed to the terms of
19 the Settlement.
20

21 8. The mailing address of the Court clerk is: United States District Court, 700 Stewart
22 Street, Seattle, WA, 98101.

23 9. The mailing addresses of counsel for the Settling Parties are:

24 James B. Cooney
25 Attorney for United States of America
26 601 D Street N.W., Room 3017
 Washington, D.C. 20004

1 Harry L. Johnsen,
2 Attorney for Lummi Nation
3 1503 E Street
4 Bellingham, WA 98225

5 Jane Marx
6 Attorney for Lummi Nation
7 2825 Candelaria Road N.W.
8 Albuquerque, N.M. 87107

9 Barbara Markham
10 Attorney for Defendant Washington State
11 Department of Ecology
12 P.O. Box 40117
13 Olympia, WA 98504-0117

14 Gene Knapp
15 Attorneys for Certain Individual Defendants
16 P.O. Box 5008
17 Bellingham, WA 98227-5008

18 Timothy Slater
19 Attorney for Certain Defendant Water
20 Associations
21 103 E. Holly Street, Suite 418
22 Bellingham, WA 98225

23 Randall J. Watts
24 Attorney for Whatcom County
25 311 Grand Avenue
26 Bellingham, WA 98225

UNITED STATES DISTRICT JUDGE

Dated: _____

Thomas S. Zilly

NOTICE OF PROPOSED SETTLEMENT

To: ALL CURRENT DEFENDANTS in United States and Lummi Nation v. State of Washington, Department of Ecology, et al. Case No. 01 CV-0047 (United States District Court, Western District, Seattle)

The parties who have been most active in litigating the above captioned lawsuit (the United States, the Lummi Nation, the State of Washington Department of Ecology, Whatcom County, Water Associations represented by J. Timothy Slater, and numerous individual defendants represented by Gene Knapp) have entered into a Settlement Agreement to resolve the outstanding issues in the case and have filed a Joint Motion to Approve Settlement and to enter a proposed Judgment and Order. The proposed Settlement and Judgment would terminate the case as to all parties to this lawsuit. The purpose of this Notice is to inform you of the proposed Settlement and to advise you that, if you have any objections to approval of the Settlement and/or entry of the proposed Judgment and Order, you are required, pursuant to a Process Order entered by the Court on ___, 2006, to file written objections with the Court on or before December 15, 2006. Any objections filed must comply with the requirements set forth in the Court's Process Order. This notice is published pursuant to the Process Order.

Any party may download a copy of the Court's Process Order, the proposed Settlement Agreement and Exhibits, the proposed Judgment and Order, and the Joint Motion to Approve Settlement and Enter Judgment and Order at the following website: http://www.ecy.wa.gov/programs/wr/rights/us_lummi_ecy.html. In addition, any party may obtain a printed copy of these documents in person at the following addresses: (1) Washington Department of Ecology, 1204 Railroad Avenue, Suite 200, Bellingham, WA, 98225; (2) Lummi Tribal Office, 2616 Kwina Road, Bellingham, WA, 98226.